

COMMISSION MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

ONE FERRY BUILDING
PORT COMMISSION HEARING ROOM
SAN FRANCISCO, CA

MONDAY, MAY 5, 2008

10:00 A.M.

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APPEARANCES

COMMISSIONERS

Mr. John Chiang, State Controller, Chair

Mr. John Garamendi, Lieutenant Governor

Mr. Michael C. Genest, Director of Finance, Represented
by Ms. Anne Sheehan

STAFF

Mr. Paul D. Thayer, Executive Officer

Mr. Jack Rump, Chief Counsel

Mr. Matt Rodriguez, Attorney General's Office

Mr. Mario T. De Bernardo, Legislative Liaison, Staff
Counsel

Ms. Kimberly Lunetta, Executive Assistant

Ms. Alicia Sabry, Executive Assistant, Long Beach

ALSO PRESENT

Mr. Tim Hemig, NRG Energy, Incorporated

Ms. Angela Haren, California Coastkeeper Alliance

Mr. John Asuncion, Blue Whale Sailing School

Ms. Ruth Gravanis, Public Trust Group

Ms. Sandy Threlfall, Public Trust Group

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1 P R O C E E D I N G S

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3 CHAIRPERSON CHIANG: Good morning. I'll call
4 this meeting of the State Lands Commission to order.
5 All the representatives of the Commission are present.

6 I'm John Chiang, the State Controller. And I
7 am very pleased to have the Lieutenant Governor, John
8 Garamendi, here and Anne Sheehan, Chief Deputy Director
9 of Finance, also present.

10 For the benefit of those in the audience, the
11 State Lands Commission administers properties owned by
12 the State as well as mineral interests. Today we will
13 hear proposals concerning the leasing and management of
14 these public properties.

15 The first item of business will be the
16 adoption of the minutes from the Commission's last
17 meeting. Is there a motion?

18 COMMISSIONER SHEEHAN: I'll move approval.

19 COMMISSIONER GARAMENDI: Second.

20 CHAIRPERSON CHIANG: There's a motion by Anne
21 seconded by John. Without objection, the motion
22 passes.

23 The next is the Executive Officer's report.
24 Paul, could we have that report please?

25 EXECUTIVE OFFICER THAYER: Thank you. Good

1 morning, Mr. Chair, Members of the Commission.

2 At our last meeting, the Commission asked that
3 staff report back on a regular basis on the progress
4 made in resolving several violations that the
5 Commission has been dealing with, so I want to start
6 off this meeting by doing just that. We have four
7 different ones we're tracking right now.

8 The first is one, the houseboat owned by
9 Jeanne Bird/Taylor. The Commission found that this was
10 an illegal use, Public Trust use, on her lease and gave
11 her until June 30th to dispose of the houseboat.

12 She has so far been unsuccessful in finding
13 somebody to take that for commercial purposes to
14 convert it to, say, an office or marina; and she's now
15 looking into whether or not she could run a commercial
16 marina herself.

17 She would, of course, have to apply to us for
18 a lease amendment in order to do that, and we're
19 continuing to work with her on whatever it might take
20 to accomplish that.

21 But the ball's still in her court, and the
22 clock is ticking, and June 30th is by when she needs to
23 either remove the houseboat or come up with a Public
24 Trust consistent use.

25 The second matter has to do with the Courtland

1 marina. The owners are Shawn Berrigan and Diane House.
2 The Commission at its last meeting extended the
3 deadline by which the owners were to make a number of
4 improvements to the marina. They had already
5 reconstructed their house so that it did not extend out
6 over Public Trust Lands, but they hadn't yet gotten in
7 the new docks.

8 On April 22nd, they purchased the new docks,
9 and they anticipate that they'll be installed as soon
10 as they are delivered which is anticipated to be end of
11 May.

12 And the Commission's deadline is June 15th, so
13 we will keep you informed as that progresses. And in
14 fact, that June 15 deadline occurs before our next
15 meeting, so I'll be able to let you know at the next
16 meeting what happened.

17 The third item is the South Bay Yacht Club.
18 The Commission may recall this is the yacht club where
19 there have been problems with abandoned derelict
20 vessels, problems with overgrown vegetation which has
21 created a fire hazard, and docks that are kept in poor
22 repair and a number of other items like that.

23 The Commission at its last meeting extended
24 the deadline for resolving all these issues until close
25 to the end of this year.

1 Since the last meeting, the Yacht Club and the
2 water district have entered into -- have reached
3 agreement on the terms of the lease geographically.
4 Some of the Yacht Club is on State Lands Commission
5 property, and some of it is on artificially created
6 waterway that's owned by the district.

7 So the importance of them clearing up this
8 lease is that BCDC was not going to authorize the
9 improvements to the docks that we're seeking until the
10 Yacht Club had demonstrated that it had the property
11 right to have the docks there.

12 So on May 8th, the board of directors is
13 scheduled to hear that for the water district and
14 hopefully will approve that lease, and that will put
15 the Yacht Club in a position then to complete its
16 application to BCDC for these repairs.

17 The Yacht Club is also continuing discussions
18 with the Department of Fish and Game for its approval
19 which is needed for the weed removal, and we're hopeful
20 that will progress, especially with the lease coming
21 close to being entered into.

22 Then the final item is the Spirit of
23 Sacramento. This is the large, I think, ferry boat or
24 commercial boat that's tied up on the Yolo County side
25 of the Sacramento River near Sacramento.

1 The owner has allowed that to become a boat
2 that's in disrepair. It almost sank at least once.
3 And it's not there pursuant to any lease from us.
4 There had previously been a lease for the pilings to
5 which the boat is attached, but that has expired.

6 The State Lands Commission staff is working
7 with the Attorney General now -- after authorization
8 from the Commission at the last meeting to pursue this,
9 is working with the Attorney General's office to put
10 together the records necessary to go to court to cause
11 that boat to be removed.

12 And that concludes the report on these four
13 violations, unless there are some questions from any of
14 the Commissioners.

15 The only other thing I would mention is that
16 our next meeting is June 24th, and that will be up in
17 Sacramento.

18 CHAIRPERSON CHIANG: Very good. Thanks Paul.

19 EXECUTIVE OFFICER THAYER: Thank you.

20 CHAIRPERSON CHIANG: The next item of business
21 is the Consent Calendar. Is there anyone in the
22 audience who wishes to speak on an item that is still
23 on the Consent Calendar? Seeing none --

24 EXECUTIVE OFFICER THAYER: Excuse me. If I
25 could mention, there is one item we need to remove

1 before the vote, and that's Item 22 which is The Nature
2 Conservancy purchase of some school lands that have
3 environmental values out in the desert. We're still
4 working on some details, and we'll return with that to
5 the Commission at a future meeting.

6 CHAIRPERSON CHIANG: Okay.

7 COMMISSIONER SHEEHAN: That's the only one?

8 EXECUTIVE OFFICER THAYER: That's the only
9 one.

10 COMMISSIONER SHEEHAN: I'll move approval of
11 the Consent Calendar, if there are no comments.

12 CHAIRPERSON CHIANG: Very good. Motion by
13 Commissioner Sheehan.

14 COMMISSIONER GARAMENDI: Second.

15 CHAIRPERSON CHIANG: Seconded by Garamendi.

16 Without objection, the motion passes.

17 Next item?

18 EXECUTIVE OFFICER THAYER: The next item is
19 our sole regular calendar item. It's a resolution that
20 the Controller and Chair had brought to staff and asked
21 to be placed on the agenda.

22 The presentation by staff will be made by
23 Mario De Bernardo.

24 MR. De BERNARDO: Good morning, Mr. Chair,
25 Commissioners.

1 This resolution deals with the incidental
2 takings of marine animals by once-through cooling
3 systems, specifically once-through cooling systems in
4 California, Southern California.

5 Currently, the National Marine Fisheries
6 Services is considering 13 permits for incidental
7 takings of marine mammals and seven permits for
8 incidental takings of sea turtles.

9 And this resolution would urge the National
10 Marine Fisheries Services to, one, consider
11 California's policy in phasing out once-through
12 cooling; two, deny permits for facilities that
13 discontinue once-through cooling; three, to make
14 information available to the Commission and the public
15 before issuing a final permit; and lastly, implement
16 stringent controls in their permits when they issue
17 permits, if they do.

18 CHAIRPERSON CHIANG: Very good. Are there any
19 questions or comments?

20 COMMISSIONER SHEEHAN: Yeah. I certainly
21 support and applaud the Controller for this effort, and
22 it builds on our previous once-through cooling.

23 The only question I had is I know when I
24 talked to staff as to, you know, had others seen this
25 already and had we received any comment?

1 EXECUTIVE OFFICER THAYER: At your suggestion,
2 we did send a copy of this to the representative for
3 CCEEB which was the group that protested the previous
4 resolution and went to OAL because they did not believe
5 it was consistent -- they thought it was a regulation
6 that wasn't properly adopted as a regulation.

7 I heard no comment back other than their
8 thanks for receiving a copy of it.

9 The company Energy also had a hand in some
10 late amendments to this, and I think there is a
11 representative here who will speak.

12 COMMISSIONER SHEEHAN: Great.

13 CHAIRPERSON CHIANG: Very good. Any other
14 additional comments?

15 COMMISSIONER GARAMENDI: No.

16 CHAIRPERSON CHIANG: Okay. We have a couple
17 of individuals who have requested time to speak.

18 First is Tim Hemig, who is the director of NRG
19 Energy, Incorporated, followed by Angela Haren with the
20 California Coastkeeper Alliance.

21 Tim, welcome.

22 MR. HEMIG: Thank you. Good morning, Mr.
23 Chairman and Commissioners. And yes, my name is Tim
24 Hemig with NRG Energy, and I'm pleased to be here.

25 NRG Energy is an independent power producer.

1 We have 2000 megawatts of power-generating capability
2 in California. That's about 1.5 million homes' worth
3 of electricity, to bring it down to earth on that.

4 We predominantly make that power with three
5 coastal power plants in Southern California, two of
6 which have State Lands leases, and we've been before
7 you recently for lease amendments.

8 Over the past few years, NRG has embarked on a
9 repowering initiative. We want to modernize these
10 aging power plants and make them more efficient. In
11 fact, last year we completed the retooling of our Long
12 Beach plant.

13 A key component of the repowering is to
14 eliminate the once-through cooling side of that, and
15 Long Beach last year became a completely air-cooled
16 plant and is no longer using once-through cooling.

17 We have similar projects in Carlsbad,
18 California and El Segundo, California. These projects
19 will improve their fuel efficiency by 30 percent and
20 eliminate once-through cooling on a portion of each of
21 the plants.

22 These projects need support. It's difficult
23 to develop in a coastal zone, so we appreciate the
24 support. And within this resolution, there is support
25 for these projects; so we endorse this resolution.

1 I want to make sure to point out that we will
2 work with National Marine Fisheries Service on the take
3 permits as mentioned also within this resolution. And
4 in fact, we submitted those applications eight years
5 ago at their request, and so it's just kind of
6 interesting that just now we're receiving notices of
7 receipt of application.

8 But we will work with them to make sure we
9 manage the issue. In fact, it really, as long as I've
10 been working with the company, for nine years, we
11 haven't had take or harmed animals, marine mammals or
12 sea turtles. In fact, we've -- the best stories are
13 how we've protected them.

14 The marine mammals, like the harbor seals,
15 sometimes come nearby. And if they're hurt or sick, we
16 actually, because we have operations near the water, we
17 can see that, and we can call -- like down in Carlsbad,
18 we call the Hubbs Sea World next door to us, and they
19 come out and they help these animals.

20 There was a mother and a baby seal that was
21 taken care of by Sea World and released back into the
22 environment. Without us being nearby to see that, that
23 animal may not have recovered.

24 So anyway, we urge your approval of the
25 resolution and ask for continued support for our

1 repowering plants.

2 CHAIRPERSON CHIANG: Very good. Thank you,
3 Tim. Angela.

4 MS. HAREN: Good morning, Chair and
5 Commissioners. I'm Angela Haren, Program Director for
6 California Coastkeeper Alliance.

7 We commend you for your continued support and
8 leadership on protecting our coastal ecosystems. We
9 strongly support the resolution, and we urge you to
10 pass it today.

11 We also submitted a letter last week. It was
12 sort of last minute, but I just wanted to call your
13 attention to it and mention that several organizations
14 who couldn't be here today, including Heal the Bay,
15 Surfrider Foundation, Sierra Club California, Defenders
16 of Wildlife, all signed on to our letter and support
17 this resolution.

18 As you've mentioned, Ms. Sheehan, in 2006 this
19 commission passed a resolution acknowledging that
20 once-through cooling causes significant ongoing damage
21 to our valuable marine ecosystem.

22 Since then, the State Water Board has been
23 working on a statewide policy to phase out once-through
24 cooling. They just released the staff draft scoping
25 document a couple of weeks ago which outlined that they

1 will be likely to phase out once-through cooling over a
2 time period.

3 Therefore, we believe that any incidental take
4 permits issued by the National Marine Fisheries Service
5 should be drafted to be consistent with these likely
6 future regulations and, as you have done, include a
7 clause that a take permit would expire if once-through
8 cooling is no longer permitted at a particular facility
9 or within the state in general.

10 Also, as we mentioned in our letter, it's
11 important to note that the Marine Life Protection Act
12 Initiative will be moving to Southern California later
13 this year; and as you know, the Act calls for the
14 creation of a network of scientifically based marine
15 protected areas to protect the natural diversity and
16 integrity of the marine ecosystems.

17 We're fairly confident that the MLPA will
18 inevitably focus on many of the same important areas
19 that are affected by the concentration of once-through
20 cooling plants in Southern California right now. These
21 are the exact same plants that are seeking incidental
22 take permits for endangered, threatened, and protected
23 species.

24 In order to ensure actual protection for
25 critical marine habitats and species, we must be

1 consistent across all regulatory processes, and we feel
2 that incidental take of marine mammals and turtles off
3 California shores should be a thing of the past.

4 Passing this resolution today will help to
5 ensure that the National Marine Fisheries Service
6 incidental take permits will be consistent with
7 California's laws supporting a healthy ocean and the
8 coming statewide policy to phase out once-through
9 cooling.

10 Thank you for exercising your Public Trust
11 responsibilities to protect California's world-renowned
12 ecosystems, and thank you for the opportunity to speak
13 today.

14 CHAIRPERSON CHIANG: Thank you Angela. Are
15 there any other comments?

16 COMMISSIONER SHEEHAN: I have a question for
17 staff. Following up on Tim's experience with MMS,
18 having eight years to wait for an application, I assume
19 we don't have any applications before us?

20 EXECUTIVE OFFICER THAYER: I don't think we
21 have any applications.

22 (Laughter)

23 EXECUTIVE OFFICER THAYER: I should point out
24 that Ms. Haren's letter which she spoke about is before
25 the Commissioners under the blue sheet.

1 COMMISSIONER SHEEHAN: I will move approval if
2 there's no other comments.

3 CHAIRPERSON CHIANG: Thank you. Second?

4 COMMISSIONER GARAMENDI: Before I second it,
5 what is the problem and at what power plants?

6 EXECUTIVE OFFICER THAYER: There's a list of
7 power plants, and different for those that are
8 potentially taking marine mammals like seals and for
9 turtles.

10 The history that I've read about it indicates
11 that at some of the plants there isn't any issue at
12 all; in others, perhaps one to two turtles might be
13 taken over a ten-year period. They get sucked in by
14 the once-through cooling apparatus that's intaking all
15 this water. So technically, these are violations of
16 several different federal laws unless they obtain an
17 incidental take permit.

18 Our resolution urges that, okay, if you are
19 going to grant this you do everything you can, require
20 everything possible to prevent the take, but then
21 inevitably if that's going to be an issue, then they're
22 required to get these permits.

23 COMMISSIONER GARAMENDI: The two nuclear
24 plants: Are they the principal ones of concern?

25 EXECUTIVE OFFICER THAYER: No, there's a list

1 of -- I can't remember how many. Ms. Haren, do you
2 know?

3 MS. HAREN: There's 13 for the marine mammals
4 and I believe seven for the sea turtles. Take. And
5 most of them are concentrated in Southern California.
6 San Onofre I know was listed for marine mammals.

7 CHAIRPERSON CHIANG: And Diablo Canyon?

8 MS. HAREN: I don't recall. I'm sorry.

9 COMMISSIONER GARAMENDI: I'd be interested in
10 finding out the extent of the issue.

11 EXECUTIVE OFFICER THAYER: We'll find out.

12 COMMISSIONER GARAMENDI: And having said that,
13 I second.

14 CHAIRPERSON CHIANG: We have the motion
15 seconded. Without objection, the motion passes. This
16 concludes the regular calendar.

17 Are there any speakers that wish to speak,
18 address the Commission, during the Public Comment
19 period?

20 We have two people. First John Asuncion
21 followed by Ruth Gravanis. Then we have a third.
22 Okay. We'll have John then Ruth first.

23 EXECUTIVE OFFICER THAYER: And I would point
24 out -- of course, it's at the Chair and Commission's
25 discretion -- but our general practice has been to

1 allow about three minutes per speaker.

2 CHAIRPERSON CHIANG: We'll adhere to that.

3 MR. ASUNCION: Thank you, Mr. Chair and
4 Members. Yes, I'm John Asuncion, and I'm the president
5 and founder of the Blue Whale Sailing School. We're a
6 charitable educational corporation here in the state
7 for the last 14 1/2 years.

8 In the year 2000, we adopted the Alviso
9 Slough, and we have removed approximately, right now to
10 date, 49 tons of garbage out of the South Bay, removed
11 all the boats. We've been doing the State's job.

12 I take no credit for it. I give the credit to
13 all of the volunteers and the taxpayers of the South
14 Bay. We are an organization that doesn't just talk
15 about it, we do the job. Okay.

16 We have been removing boats, working with
17 California Fish and Game, and we're concerned, again,
18 about our neighbors, the South Bay Yacht Club.

19 Not trying to be rude to them, but it isn't a
20 yacht club. If you could see the photographs -- and I
21 think you've seen them over the years -- it's almost
22 disgusting what has been taking place with the
23 discharge of the human waste, abandoned boats, and to
24 be honest with you, I'm tired of it.

25 I filed a lawsuit -- we had the Yacht Club and

1 the Water District in court last week. We're getting
2 an injunction. Paul Thayer brought up about they're
3 hoping to get a lease signed by the 8th of this week.
4 We are going to stop that lease. We are not going to
5 condone a yacht club that's been polluting the
6 properties of the taxpayers, all of us taxpayers, for
7 over 30 years and not standing up to be responsible.

8 Myself and one of our assistants, Doug Boyd,
9 seven years ago, Cruz Bustamante was Lieutenant
10 Governor, and Steve Westly, they asked us to come to
11 the Commission. We in turn did. Here it is, years
12 later. We are no closer. They are no closure in
13 getting that lease. Okay?

14 They are trying to piggyback on a lease. I
15 mean, a lease with the Water District and use a format
16 of the environmental impact studies on the particular
17 environmental area they've destroyed, and it's not
18 going to happen.

19 We met with the water district, Beau Goldie,
20 and he says it's not going to happen. So December --
21 when December comes, they are still not going to have
22 this permit. They are not going to have the lease.

23 Wednesday of this week, I will have the
24 California Fish and Game that I have been working with
25 for eight years -- I have two lieutenants, the chief of

1 the fire department of the City of San Jose will be
2 there. They're probably going to cite State Lands
3 Commission again and the Water District and the South
4 Bay Yacht Club with this pollution.

5 This pollution is appalling. I sit here as a
6 boater and a yachtsman and look out here in this bay,
7 when I'm out on my boat, or down in Southern California
8 where I live, and to see this pristine bay, and we need
9 to protect it.

10 Again, here I'm talking as a taxpayer, okay?
11 Let's do something about this. We cannot let this go
12 on.

13 Thank you very much for your time.

14 CHAIRPERSON CHIANG: Thanks John. Ruth,
15 followed by Sandra.

16 COMMISSIONER GARAMENDI: Ruth, are you on the
17 same subject? Different subject. Same issue?

18 MS. GRAVANIS: Good morning, Commissioners.
19 My name is Ruth Gravanis, and I welcome you to San
20 Francisco. It's a real treat to have you meet here.

21 And I also want to commend you for the passage
22 of the previous item. There's never too much we can do
23 to protect our precious marine resources, and I'm very
24 grateful for your interest in that topic.

25 The next speaker will talk more specifically

1 about the need for more education of our Public Trust
2 trustees, but I want to emphasize one aspect of the
3 education that I feel is really needed and that is:
4 What are the duties of a trustee with respect to the
5 uplands that are now more and more being brought into
6 the Public Trust through various trades?

7 And I didn't have to bring any visuals this
8 morning because if you look out the window past the
9 drawings, you see Yerba Buena Island and Treasure
10 Island.

11 And as you know, the Public Trust is expected
12 to be lifted from Treasure Island to allow the
13 development of housing there which we all support, but
14 then what do you do? We're going to impress it on
15 Yerba Buena Island which as you can see is not a place
16 for navigation or fisheries.

17 So how do the trustees regard these areas such
18 as the uplands on Mare Island as well as Yerba Buena
19 Island where fishing and navigation are no longer
20 relevant? What should be our priorities? How do we
21 impress upon them that preservation of land in its
22 natural state, for example, is one thing that needs a
23 lot more attention than it has been given in the past?

24 So we have lots of issues in San Francisco.
25 We have the use of the historic buildings on Treasure

1 Island also. I think you can see a part of Building
2 One, the administration building, the two historic
3 hangars. What are Trust-consistent revenue-generating
4 uses that we can put there?

5 Some of the development efforts are
6 considering things like parking lots there. And I
7 think we need to look very, very closely at how to
8 preserve the meaning of the Public Trust in these
9 buildings.

10 Seawall Lot 337 in San Francisco is about to
11 undergo major development, and very welcome development
12 for the most part. But we need to look carefully at
13 how to preserve the spirit of the Public Trust doctrine
14 even though Senate Bill 815 did remove the restrictions
15 on Public Trust uses on most of that site.

16 Then of course the development of Hunters
17 Point shipyard and Candlestick Point have some Public
18 Trust areas still that we need to regard very, very
19 carefully.

20 I want to point out that I am very grateful
21 for the ongoing working relationship that the Public
22 Trust Group has had with the State Lands Commission
23 staff, that you know we really appreciate that and look
24 forward to working with all of you in the future.

25 CHAIRPERSON CHIANG: Thank you very much,

1 Ruth. Sandy?

2 MS. THRELFALL: Good morning, Chair and
3 Commissioners. My name is Sandy Threlfall with the
4 Public Trust Group. Ruth and I are on the executive
5 board.

6 I have submitted for your records two
7 documents, a rather lengthy document which I am
8 surprised to see actually refers to this project right
9 here. I didn't see it on the agenda, but it was very
10 thoughtful of you to put the map up.

11 And that has to do with the Public Trust trade
12 that is proposed to happen with this project. The
13 letter indicates that under Chapter 542, Perata's act,
14 that allowed the trade there was no trade land sited.

15 The Port has since bought the land that they
16 now want Public Trust Lands to approve which to me
17 circumvents a public process that is required in
18 chapter 542.

19 So, it's something that's difficult to
20 summarize in brief. Hence, I've given you my
21 documents.

22 What I would like to do is have your help and
23 the staff's help in working on a trustee handbook
24 that -- the Public Trust Lands are a very finite
25 resource, and there is some confusion and difficulty on

1 the part of trustees, given the turnover with port
2 commissioners and such, and certain legal
3 representatives who did not recognize value of the
4 Public Trust doctrine and the fact that they are in
5 fact guiding the trustees gives us considerable worry.

6 So what we would love to do and what the State
7 Land's staff did very well a year and a half ago, we
8 asked for workshops. You did it. You helped them
9 happen.

10 We had asked for workshops for trustees. The
11 only workshop that I attended was in San Francisco
12 which covered Port of Oakland, the Port of San
13 Francisco, the Port of Richmond, and I'm sure there are
14 a couple of the trustee groups in this. There was one
15 trustee present. One.

16 So while the workshop intent was for trustees,
17 they were public meetings. The public very much
18 appreciated the information because this is a very
19 difficult concept. What we're hoping we can help work
20 with staff on is a handbook.

21 The website is excellent if you are an
22 attorney or a very knowledgeable individual. It has
23 the doctrine, and it has the policy. But I think not
24 all trustees are attorneys, and trustees also have
25 the -- I hate to say, but the conflict of being

1 responsible for the financial position of their port.
2 And oftentimes, that is at odds with Public Trust Lands.
3 It doesn't need to be. I think in the confusion of
4 what the value of the Public Trust Lands are they don't
5 always get the interpretation.

6 I have talked with the Executive Director of
7 the staff, and I'm feeling that we can work together to
8 create a handbook that's both visual and verbal.

9 The sense of how the Trust lands have been
10 constricted and how much more valuable they are as our
11 population continues to grow. Yes, for marine. Yes,
12 for other water-related things. But also for access,
13 and water is the best therapy in the world. Get people
14 to the water; it reduces stress.

15 So I see the Public Trust Lands as an
16 incredible asset, and we would like to do our part to
17 get a handbook. Thank you very much.

18 CHAIRPERSON CHIANG: Happy to have that
19 conversation with you. Thank you. Are there any other
20 public comments?

21 COMMISSIONER GARAMENDI: I have a couple of
22 questions, if I might, Mr. Chairman.

23 CHAIRPERSON CHIANG: Sure.

24 COMMISSIONER GARAMENDI: So the Public Trust
25 Group wants to help put together an understandable

1 handbook for the lay population. How could we do that
2 Mr. Thayer?

3 EXECUTIVE OFFICER THAYER: I think --

4 COMMISSIONER GARAMENDI: How can we assist
5 them getting it done?

6 EXECUTIVE OFFICER THAYER: We certainly should
7 be able to do that. Through the past few years, we've
8 undertaken a variety of measures to try and promulgate
9 the Public Trust principles.

10 I think when you first came on we were sharing
11 our Public Trust brochure that's available to the
12 public. And several years ago, the Commission adopted
13 a Public Trust Policy and an explanation of that policy
14 which we keep up on the website. All these documents
15 have been forwarded to the grantees.

16 But we'd be happy to, I think, relying on a
17 lot of that information, generate something that might
18 be a little bit more user friendly.

19 With respect to the trustees, I think though
20 that they have a more complicated responsibility that's
21 dictated by law. And I think to some extent, by the
22 nature of that, any sort of handbook that's going to be
23 helpful to them is going to have to be a little bit
24 legalistic because that's what's involved here.

25 There is very complicated case law, and in

1 order to give them something that would be useful as a
2 handbook rather than just as a brochure, we're probably
3 going to have to be somewhat technical. But there's no
4 reason why we can't do an overview as an introduction
5 to that that's more generally written.

6 But we'd be glad to work on that, bring it
7 back to the Commission for its review.

8 COMMISSIONER GARAMENDI: Apparently some
9 people think it's necessary.

10 EXECUTIVE OFFICER THAYER: Sure.

11 COMMISSIONER GARAMENDI: The Public Trust
12 group. Okay. And you will look into it.

13 EXECUTIVE OFFICER THAYER: Yes.

14 COMMISSIONER GARAMENDI: I want to go back to
15 the Aviso Slough issue presented by you and by a member
16 of the public. How does our action on the lease
17 address the problems that were presented by Mr.
18 Asuncion?

19 EXECUTIVE OFFICER THAYER: Basically, all of
20 those issues do have to be addressed. And I would
21 disagree with him, though, in terms of how we're going
22 to get to that.

23 I think Mr. Asuncion stated that they want to
24 see the Yacht Club out of there entirely, whereas we're
25 working to get the Yacht Club to comply with the lease

1 and prevent these problems from occurring.

2 So Mr. Asuncion today indicated that he was
3 going to be opposing the district issuing a lease, and
4 yet BCDC has informed us and the Yacht Club that
5 without that lease from the district they're disabled
6 from issuing a permit for some of the repair work.

7 So there is some conflict going on there. And
8 we're going to continue to try and work with the lessee
9 to clean up the site.

10 COMMISSIONER GARAMENDI: So there is a
11 potential catch-22.

12 EXECUTIVE OFFICER THAYER: Yes. Ultimately,
13 if the Yacht Club does not have a lease from the
14 district, it has no business maintaining its facility
15 on district lands.

16 And I don't remember the exact percentage, but
17 it's somewhere 60/40 or 50/50 in terms of the split
18 between how much of their facility is on State lands
19 and how much of it is on District lands.

20 COMMISSIONER GARAMENDI: So we may wind up in
21 a no-win situation.

22 EXECUTIVE OFFICER THAYER: That might be the
23 case.

24 COMMISSIONER GARAMENDI: So if Mr. Asuncion's
25 lawsuit prevents the District from issuing a lease, we

1 can't issue a lease, and the Yacht Club can't clean up
2 its mess.

3 EXECUTIVE OFFICER THAYER: Now we would still,
4 of course, be responsible for taking actions to assure
5 that that part of the Yacht Club that's on State lands
6 would be cleaned up.

7 But for the Yacht Club, it puts it in a very
8 difficult position if can't get the permits for the
9 remainder.

10 And, of course, some of the pollution problems
11 that Mr. Asuncion refers to aren't going to respect
12 that line. If they're created on the other side, even
13 if we clean up our side, there are problems.

14 COMMISSIONER GARAMENDI: Under the existing
15 lease, is there a termination and termination of the
16 lease, is there -- should the lease terminate, is there
17 a mechanism to force the Yacht Club to remove and clean
18 up?

19 EXECUTIVE OFFICER THAYER: Certainly.
20 Absolutely.

21 COMMISSIONER GARAMENDI: Whether they have the
22 resources to do it or not is another matter.

23 EXECUTIVE OFFICER THAYER: Exactly. Which is
24 one of the reasons we're hopeful of working it through
25 with the present ownership and the present tenants.

1 Because if they go away, there are probably not going
2 to be the resources available to do that.

3 COMMISSIONER GARAMENDI: Thank you for that.

4 On a related matter, it's the cleanup of
5 derelict boats and others that Mr. Asuncion raised the
6 point that they do a lot of that, and I think he said
7 the State doesn't do much, if any, of that.

8 Whose responsibility is it at the State level
9 to remove boats?

10 EXECUTIVE OFFICER THAYER: There are several
11 agencies that have undertaken it; and in certain
12 circumstances where we've been able to find the money,
13 we've gotten involved. So for example, the last time
14 the O'Learys had a boat outside Sacramento, city of
15 Sacramento, we were able to get that taken care of.

16 But we normally don't have enough money to do
17 it. We have occasionally asked for appropriations, and
18 we received some 10 or 15 years ago to clean up hazards
19 to navigation which we define to include old pilings,
20 old peers, and abandoned vessels. So we've undertaken
21 that effort before when we've had the money, but we
22 don't have the money now.

23 There was a State law passed three or
24 four years ago which made money available, I think
25 through the Department of Boating and Waterways, to

1 sheriffs of individual counties to remove abandoned
2 vessels.

3 There are a lot of criteria that have to be
4 met in order for the sheriffs to use that. It's not a
5 lot of money, and the vessel that's being taken care of
6 has to be worth less than \$1,000 or something. It's a
7 very low amount, so the counties are sometimes
8 reluctant to move in for fear that the vessel's worth
9 more and they don't have the authority to do it.

10 COMMISSIONER GARAMENDI: I was on the
11 Sacramento River yesterday north of the confluence of
12 the American, and there is this marvelous piece of
13 trash along the east side of the river, just upstream.
14 I don't know. Looks like an ancient boat or dock. God
15 knows what it is.

16 Who is responsible for cleaning that kind of
17 thing up?

18 EXECUTIVE OFFICER THAYER: Could be us, could
19 be one of these other state agencies. But often it's
20 not taken care of because no one has the money.

21 COMMISSIONER GARAMENDI: Have we ever asked
22 for money to clean up, for example from the Boating and
23 Waterways fund to get specific -- to take on the
24 responsibility and to get the money from that fund?

25 EXECUTIVE OFFICER THAYER: That program

1 statutorily was set up to make the money available to
2 the counties with the idea that they, their sheriffs --
3 like frequently they have boat patrols, that kind of
4 thing -- are much more aware of the individual hazards
5 that are out there we can't be aware of since we don't
6 have boats, we don't have the opportunity to be out
7 there as much, we don't have the presence.

8 COMMISSIONER GARAMENDI: But we do have the
9 ability to contract.

10 EXECUTIVE OFFICER THAYER: We do.

11 COMMISSIONER GARAMENDI: If we have the money.

12 EXECUTIVE OFFICER THAYER: If we have the
13 money.

14 And as I say, we've done that for other
15 hazards. We're doing that right now, for example, off
16 of Santa Barbara. I think your office received a
17 letter from somebody who was concerned about these
18 metal pilings that have become exposed.

19 We were able to get money from -- there's a
20 program called CEIP, Coastal Environmental Impact
21 Program, which is a federal program that makes money
22 available to the State to deal with really offshore
23 oil-related impacts.

24 So we're always looking for opportunities like
25 that to deal with these issues, and we've made budget

1 change proposals to the Legislature in the past to take
2 care of hazards in general that would include boats but
3 haven't been able to get it.

4 COMMISSIONER GARAMENDI: Snags that are stuck
5 in the bottom of the river that present hazards to
6 boaters, is that State Lands' responsibility since the
7 bottom of the river is state land?

8 EXECUTIVE OFFICER THAYER: To some extent, and
9 that hazardous money was going to be used for that sort
10 of thing; but the Coast Guard also has a program for
11 removal of some of that, I know in the bay, for
12 example.

13 COMMISSIONER GARAMENDI: Corps of Engineers.

14 EXECUTIVE OFFICER THAYER: Corps of Engineers.

15 COMMISSIONER GARAMENDI: Is there any effort
16 to coordinate with them? Have we made any effort to
17 coordinate with them?

18 EXECUTIVE OFFICER THAYER: We have not, again
19 primarily because the information we get about that is
20 pretty anecdotal. We don't have the ability to go out
21 there and survey and determine where are the worst
22 hazards, where should the money go.

23 We conducted a statewide study on hazards with
24 a special appropriation back in the '80s, and we filled
25 up three volumes with places that should be removed,

1 and we estimated at that time about \$12 million, I
2 think, would take care of all of it. We received
3 \$2 million and abated, you know, the worst of them.
4 But there were still ten million left at that point,
5 and I'm sure there are a lot more.

6 COMMISSIONER GARAMENDI: Mr. Chairman, may I
7 make a suggestion that we instruct the staff to do a
8 survey of funding that might be available, federal,
9 funding from the Corps, the Coast Guard, and also State
10 funding, for example Boating and Waterways funding,
11 permits, licenses, and so forth, and get a sense of
12 what might be available.

13 It seems to me that many of these things are
14 stuck into the mud that we are responsible for, or the
15 bottom of the river that we're responsible for, or the
16 side.

17 And I had a long discussion yesterday about
18 this, so excuse me for dumping it on you today without
19 notice, but I'm there. And the discussion was
20 everybody's responsible but nobody is responsible.

21 It seems to me that we have the Public Trust,
22 and that's our responsibility, and much of this is on
23 Public Trust land; and therefore, why don't we assume
24 we're responsible and go search for the money?

25 The Department of Finance, of course, is

1 desperately interested in assisting us in finding the
2 money.

3 COMMISSIONER SHEEHAN: As long as it's not
4 general funds, you can look anywhere you want.

5 (Laughter)

6 COMMISSIONER GARAMENDI: Well, the nexus is
7 between the Boating and Waterways, hazards of various
8 kinds, three of which I saw yesterday, trash. You
9 mentioned the paddle wheeler which, in your discussion,
10 you brought that up.

11 Anyway, why don't we go get with it and search
12 for the money and try to find it. It is the budget
13 season, and one never knows what's hiding in various
14 closets. So let's go push aside the cobwebs and see if
15 there's a little cash cache there.

16 EXECUTIVE OFFICER THAYER: We'll report back
17 to the Commission on what programs are in existence,
18 but we do look regularly for this. I mean it's a
19 problem that's continually coming to us, and it should.

20 In fact, in the East Bay, we voluntarily were
21 involved with a self-help program where we helped
22 organize cleanup, so Slough worked with the local
23 agencies, BCDC, then we managed to get a garbage
24 company that was willing to take away the debris. So
25 it all worked out, but it was done on a sort of ad hoc

1 basis.

2 COMMISSIONER GARAMENDI: Well, let's assume
3 that the Department of Water Resources wants to
4 position a lot of riprap on State lands. And the barge
5 company going up and down the river with their
6 marvelous little machines can pick up trash along the
7 way in exchange for access to State lands.

8 They've got a gazillion dollars. Let's be
9 creative. I'm sure there are opportunities, and I'm
10 sure Anne has access to a lot.

11 (Laughter)

12 CHAIRPERSON CHIANG: I think John's had many
13 excellent ideas just articulated. I think it's a
14 strong sense of the Board we ought to go forward with
15 John's ideas.

16 Any other questions or comments? Okay.

17 That includes the Open Session of the meeting.
18 We will now adjourn into Closed Session. If we could
19 have the room cleared for Closed Session, please.

20 (Closed Session)

21 * * *

22 (Thereupon the CALIFORNIA STATE LANDS
23 COMMISSION meeting adjourned to Closed
24 Session at 10:42 a.m.)
25

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2 I, LINDA KAY RIGEL, a Certified Shorthand
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10 I further certify that I am not of counsel or
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13 IN WITNESS WHEREOF, I have hereunto set my
14 hand this May 11, 2008.

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